THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.21290 of 1994

Dt. 23-02-2006

Between:

State of A.P.through Forest Range Officer, Khanapur.

..Petitioner

and

1.S.Narayana s/o Mallaiah

(dismissed for default vide court order dt.20-06-2001)

and others.

..respondents.

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Oral Order:

The Forest Range Officer, Khanapur obtained a Rule from this Court calling upon the respondents to show cause why a writ in the nature of Certiorari shall not be issued after calling upon the records in Forest Appeal No.3 of 1992 on the file of Additional Distrcit Judge, Adilabad—3rd respondent and quash the judgment and decree in allowing the appeal of respondents 1 &2.

The lorry bearing No.ATK-3942 was seized and produced before the Forest Range Officer under Section 44 of the A.P.Forest Act for illegally transporting the teak timber beneath the sanitary pipes covered with tarpaulin. On issuance of show cause notice 1st respondent stated that he sold the vehicle to the 2nd respondent therefore, he had no knowledge about the same and proceedings are liable to be quashed; whereas the 2nd respondent filed explanation to the show cause notice except stating that he purchased the vehicle from the 1st respondent and it has to be transferred on record even though vehicle was given possession and he pleaded his innocence for the contravention. The Authorised Officer after due enquiry into the offence held that the respondents 1 and 2—lorry owners failed to discharge the duty cast upon them, namely in spite of taking all reasonable and necessary precautions for not committing offence the said offence was committed without their knowledge, and accordingly ordered for confiscation of the teak together with lorry for commission of the offence. On appeal by the respondents 1 and 2 the learned District Judge allowed the appeal only on the ground as seen from the order there is nothing to suggest that the owner of the lorry was found travelling at the time of offence when it was seized. Hence in the absence of any such evidence adduced on behalf of the forest officials confiscation of lorry cannot be sustainable and accordingly set aside the order of the Authorised Officer.

Learned Government Pleader for Forests contends that it is for the respondents 1 and 2—lorry owners to prove their innocence.

It is well settled that mere *ipse dixit* of the owner cannot be said to be sufficient evidence to discharge the burden. The owner of the vehicle has to discharge the burden that he has taken all precautionary measures required to prevent illegal transport by giving necessary instructions to the driver and cleaner. Mere non-accompanying of the owner itself cannot be presumed that he has no knowledge of the same. (see (1997) 9 SCC 647).

In view of the same, the learned District Judge was erred in presuming non-travelling of the owner can be presumed that he has no knowledge and the same

cannot be sustainable and it is accordingly set aside restoring the order passed by the Authorised Officer.

The writ petition is accordingly allowed. No costs.

_____ A.GOPAL REDDY, J.

23-02-2006

Murthy